FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/157470

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 26, 2014, at Racine, Wisconsin.

NOTE: The record was held open until July 1, 2014, to give the Petitioner's Speech Language Pathologist (SLP) an opportunity to submit various journal articles. The packet of articles has been marked as Exhibit 6 and entered into the record.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied the Petitioner's request for speech therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: OIG by letter
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.

2. On December 5, 2013, the Petitioner's school district conducted a speech/language evaluation to see if the Petitioner needed special education services, because prior to this, the Petitioner was receiving in-home speech/language therapy. (Exhibit 5, pg. 39)

3. At the time of the December 5, 2013 evaluation, the Petitioner was age two years, nine months.

4. During the December 5, 2013, evaluation, the Petitioner's mother stated that the Petitioner is "able to combine 4-5 words and his speech is usually understandable", but "does not feel his skills are age level." (Exhibit 5, pg. 39)

5. According to the December 5, 2013 evaluation, the Petitioner's receptive skills appeared to be within normal limits and his expressive skills appeared to be within normal limits, with noted strength in expressive vocabulary, but spontaneous language use was at an age equivalent of 18-21 months of age. (Exhibit 5, pgs. 39 and 40)

6. The December 5, 2013 evaluation indicated under articulation / phonology that the Petitioner's, "performance on the Hodson CAPP-3rd Edition was characterized by a severe level of severity….Overall intelligibility was depressed without careful listening and context." (Exhibit 5, pg. 40).

7. The Petitioner's school district conducted an IEP meeting and generated an IEP evaluation report dated January 10, 2014, in which the school district determined the Petitioner to not be in need of services. (Exhibit 5, pg. 29)

8. In the January 10, 2014 IEP evaluation, the school district noted that Petitioner's reported that most people understood 80-90 percent of what the Petitioner says and that he is combining 4 to 5 words. (Exhibit 5, pg. 31)

9. In its January 10, 2014 IEP evaulation, the district indicated:

> Based upon [the student's] current performance in the home setting, an impairment in the area of Speech/Language was considered and rejected as [the student] did not demonstrate atypical voice or fluency behaviors, delays in speech/sound development, or performance on norm referenced measures of receptive and expressive language that was at least 1.75 standard deviations below the mean for his chronological age. Concern is noted for his limited generalization of his reported skills to the classroom setting. Because the state criteria of a Speech/Language impairment was not met, therapy would not be recommended at this time. Reevaluation is suggested per parent discretion in 6 months. Parents are urged to consider possible placement in a community-based preschool in order to provide [the student] with opportunities for socialization and generalization of his communication, gross motor and fine motor skills.
>
> (Exhibit 5, pg. 33)

10. On March 7, 2014, Petitioner's mother brought the Petitioner to Medical Support Services for a Speech/Language evaluation. (Exhibit 5, pg. 12)

11. The evaluation found the Petitioner to have a moderate impairment, based upon the Hodson Computerized Assessment of Phonological Patterns. (Exhibit 5, pg. 12)

12. The therapist from Medical Support Services did not discuss discrepancies between the school district's findings and her findings. (Testimony of Kelly [redacted], Medical Support Services SLP)

13. On March 12, 2014, Medical Support Services, Inc. submitted a prior authorization request on behalf of the Petitioner requesting coverage of a speech/language evaluation and 52 sessions of speech/hearing therapy at a cost of $6,974.20. (Exhibit 5, pg. 4)

14. At the time of the PA request, the Petitioner was three years, one month. (Exhibit 5, pg. 4)

15. On April 2, 2014, the Department of Health Services (DHS) sent the Petitioner a letter indicating that the request for services was denied. (Exhibit 5, pgs. 48-53)

16. On April 2, 2014, DHS sent Medical Support Services notice of the same. (Exhibit 5, pgs. 52-53)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

Wis. Admin. Code § DHS107.18(1)(a) defines covered speech and language pathology services as those services that are, "medically necessary, diagnostic, screening, preventive or corrective speech and language pathology services prescribed by a physician and provided by a certified speech and language pathologist or under the direct, immediate on-premises supervision of a certified speech and language pathologist."

Wis. Admin. Code § DHS107.18(1)(c) lists the speech procedure treatments that must be performed by a certified speech and language pathologist or under the direct, immediate, on-premises supervision of a certified speech and language pathologist:

1. Expressive language:
- **a.** Articulation;
- **b.** Fluency;
- **c.** Voice;
- **d.** Language structure, including phonology, morphology, and syntax;
- **e.** Language content, including range of abstraction in meanings and cognitive skills; and
- **f.** Language functions, including verbal, non-verbal and written communication;

2. Receptive language:
- **a.** Auditory processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension; and
- **b.** Visual processing — attention span, acuity or perception, recognition, discrimination, memory, sequencing and comprehension;

3. Pre-speech skills:
- **a.** Oral and peri-oral structure;
- **b.** Vegetative function of the oral motor skills; and
- **c.** Volitional oral motor skills; and **.** Hearing/auditory training:

4. Hearing screening and referral;

a. Auditory training;
b. Lip reading;
c. Hearing aid orientation; and
d. Non-verbal communication.

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department."

Wis. Admin. Code §DHS107.02(3)(e)

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
(b) Meets the following standards:
1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. **Is not duplicative with respect to other services being provided to the recipient**;
7. **Is not solely for the convenience of the recipient, the recipient's family, or a provider**;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Emphasis added, Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria.

COVERAGE OF THE MARCH 2014 EVALUATION

According to the consultant letter, DHS denied coverage of the March 2014 speech/language evaluation by Medical Support Services, because it determined that there was no medical necessity for a second evaluation only three months after the school district's evaluation. In short, the second evaluation was duplicative. Indeed, the record does not contain any evidence providing a clear reason for why a second evaluation was necessary, other than Petitioner's mother wanted one.

Given that only three months passed between the school district's evaluation and Medical Support Services' evaluation, given that both evaluations used a Hodson based assessment to measure the Petitioner's intelligibility, given that the findings of Medical Support Services were not necessarily worse than the findings of the school district's evaluation and given that there is no evidence of a significant change in Petitioner's condition that occurred within those three months, it is found that DHS correctly determined the evaluation by Medical Support Services to be duplicative and therefore, not medically necessary as defined by Wis. Adm. Code. §DHS 101.03(96m) above. As such, DHS correctly denied coverage of the evaluation.

COVERAGE OF THE REQUESTED THERAPY

There are discrepancies between the school district's evaluation of Petitioner's need for speech therapy and the evaluation done by Medical Support Services. The school determined the Petitioner to have a severe intelligibility issue, but despite this deemed the Petitioner's expressive communication to be within normal limits. [1] Medical Support Services deemed the Petitioner to have moderate intelligibility issues, but found Petitioner to be in need of speech therapy services. These discrepancies are troubling and raise unanswered questions such as why did Medical Support Services find the Petitioner to have less severe intelligibility issues than the school, why is there a disagreement with regard to whether the Petitioner's expressive skills are within normal limits and what standards did the school use to determine the need for services and how are those the same or different as the Medicaid standards for determining a need for services?

When asked for an explanation for why the school district and Medical Support Services came to different conclusions about the need for services, Ms. [redacted], the SLP from Medical Support Services, was not able to provide a certain answer and speculated that the school district may have neglected to perform certain tests. Ms. [redacted] further testified that she did not discuss her findings with the school SLP, and as such does not know what the school's evaluation entailed, nor what specific standards the school applied to determine the Petitioner's need for speech/language services.

In the absence of any clear explanation for the discrepancies between the school's evaluation and the evaluation conducted by Medical Support Services, there is insufficient evidence to support a finding that the Petitioner had a condition that required speech therapy at the time of the April 2014 prior authorization request.

CONCLUSIONS OF LAW

DHS correctly denied the Petitioner's request for Speech Language services.

[1] It should be noted that under Wis. Admin. Code §DHS107.18(1)(c), articulation, fluency, phonology, morphology, and syntax are included under the treatments to address expressive communication needs.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of July, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 25, 2014.

Division of Health Care Access and Accountability